

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 18-32696

Chapter 7

Gregg Joseph Schmitt,

Debtor.

***NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM STAY***

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TO: Debtor and Attorney for Debtor; Patti J. Sullivan, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation, a secured creditor of the Debtor, by its attorney, moves the court for the relief requested below, and gives notice of hearing herewith.

2. The court will hold a hearing on this motion at **1:30 pm on Wednesday, September 26, 2018**, before the Honorable Katherine A. Constantine, in courtroom No. 2C, 2nd floor, at the United States Courthouse, 316 North Robert Street, Saint Paul, Minnesota 55101.

3. Any response to this motion must be filed and served not later than Friday, September 21, 2018, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor.

5. The petition commencing this Chapter 7 case was filed on August 28, 2018 and the case is now pending in this court. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation holds a valid, perfected interest in a 2005 Winnebago Journey Motorhome, vehicle identification number 4UZA AHDC75CV28043 (the "Vehicle").

7. Copies of Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation's agreement with the Debtor (the "Contract") and evidence of perfection of Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. As of September 5, 2018, payments due under the terms of the Contract for the months of May 2018 through August 2018 totaling \$5,582.44 have not been made by the Debtor. Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation has not been provided with evidence of current insurance on the Vehicle.

9. As of September 5, 2018, the balance due under the Contract is \$99,605.06. On information and belief, the NADA retail value of the Vehicle is approximately \$61,800.00.

10. Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation's interest is depreciating, while there is a failure to make payments by the Debtor. Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor to make payments pursuant to the Contract or otherwise provide Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation with adequate protection of its interest in the Vehicle and the failure of the Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation to relief from the stay.

12. The Vehicle is depreciating therefore Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, Gary Esparza, or some other representative, will testify on behalf of Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation will repossess the Vehicle promptly upon the court signing the order.

WHEREFORE, Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation respectfully moves the court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation to foreclose its interest in the Vehicle in accordance with

nonbankruptcy law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 11, 2018

STEWART, ZLIMEN & JUNGERS, LTD.

By /s/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
2860 Patton Road  
Roseville, MN 55113  
651-366-6380 Ext. 111

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 18-32696

Gregg Joseph Schmitt,

Chapter 7

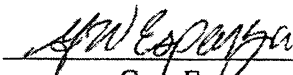
Debtor.

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**VERIFICATION**

I, Gary Esparza, a Bankruptcy Specialist of Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation declare under penalty of perjury that the facts contained in the motion are true and correct to the best of my knowledge, information and belief.

Dated: 9-11-2018

  
\_\_\_\_\_  
Gary Esparza  
Bankruptcy Specialist  
Santander Consumer USA Inc., servicer for  
GEMB Lending, Inc. FKA E\*Trade  
Consumer Finance Corporation

<b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b>  No. _____ Date <b>08/29/05</b>	Seller: <b>PLEASURELAND RV CTR-NORTH 7900 RIVERDALE DRIVE RAMSEY MN 55303</b>	Buyer: <b>METROTHER MUSIC WORKS, INC. GREGG JOSEPH SCHMITT 13725 NORELIUS LANE LINDSTROM, MN 55045</b>
	"We" and "us" mean the Seller above, its successors and assigns. "You" and "your" mean each Buyer above, and guarantor, jointly and individually.	

**SALE:** You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year Make Model	2005 JOURNEY WKP39K	VIN	4UZAHD75CV28043	Other:
			Lic. No./Year	<input checked="" type="checkbox"/> New <input type="checkbox"/> Used	

# Exhibit A

Description of Trade-In: **2005 FLEETWOOD PACE ARROW**

**SECURITY:** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessions, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

**PROMISE TO PAY AND PAYMENT TERMS:** You promise to pay us the principal amount of \$ 180148.39 plus finance charges accruing on the unpaid balance at the rate of 6.99 % per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

☐ **LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be ☐ paid in cash, ☐ paid pro rata over the contract term, ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

**DOWN PAYMENT:** You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

## TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
<b>6.99 %</b>	<b>\$ 154798.01</b>	<b>\$ 180148.39</b>	<b>\$ 334946.40</b>	<b>\$ 42148.36</b> <b>\$ 377094.76</b>

**Payment Schedule:** Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
<b>240</b>	<b>1395.61</b>	<b>Monthly Beginning: 09/28/05</b>

**Security:** You are giving a security interest in the Motor Vehicle purchased

☐ **Late Charge:** If a payment is more than \_\_\_\_\_ days late, you will be charged \_\_\_\_\_. ☐ This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

**Prepayment:** If you pay off this Contract early, you will not have to pay a penalty.

☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

**Contract Provisions:** You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

**CREDIT INSURANCE:** Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

**Credit Life:** Insured \_\_\_\_\_  
☐ Single ☐ Joint Prem. \$ N/A Term \_\_\_\_\_

**Credit Disability:** Insured \_\_\_\_\_  
☐ Single ☐ Joint Prem. \$ N/A Term \_\_\_\_\_

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverage we

## ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 4004.00) \$ 222004.00  
 Service Contract, Paid to \_\_\_\_\_ \$ N/A  
 Cash Price \$ 222004.00  
 Manufacturer's Rebate \$ N/A  
 Cash Down Payment \$ N/A  
 Deferred Down Payment \$ N/A  
 a. Total Cash/Rebate Down \$ N/A  
 b. Trade-In Allowance \$ 156400.00  
 c. Less: Amount owing \$ 114251.64  
 Paid to:  
 d. Net Trade-In (b. minus c.) \$ 42148.36  
 e. Net Cash/Trade-In (a. plus d.) \$ 42148.36  
**Down Payment (e. disclose as \$0 if negative)** \$ 42148.36



# Exhibit B

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION

THE MUSIC WORKS INC  
SCHMITT GREGG JOSEPH  
13725 NORELIUS LN  
LINDSTROM MN 55045

05 Year	WINN Make	MH Model	C31101742 Title Number
4UZAADHC75CV28043 VIN	08/28/05 Security Date	NQ Rebuilt	

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

First Class  
U S Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

RVC7055

1ST SECURED PARTY  
**LIEN HOLDER**

E TRADE CONSUMER FINANCE  
PO BX 57082  
IRVINE CA 92619-7082





## 2005 Winnebago Journey Series M-39K (350)(\*\*)

### Values

	Suggested List Price	Low Retail	Average Retail
Base Price	\$191,070	\$51,300	\$61,800
Mileage (0)		N/A	N/A

### Options (Add)

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Total Price	\$191,070	\$51,300	\$61,800
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## Value Type Definitions

**Suggested List** — The value listed reflects the approximate price of the unit when it is brand new. The prices listed are furnished by the manufacturer and are assumed to be correct. The list price does not include freight charges.

**Low Retail Value** — A low retail unit may have extensive wear and tear. Body parts may have dents and blemishes. The buyer can expect to invest in cosmetic and/or mechanical work. This vehicle should be in safe running order. Low retail vehicles usually are not found on dealer lots. **Low retail is not a trade-in value.**

**Average Retail Value** — An average retail vehicle should be clean and without glaring defects. Tires and glass should be in good condition. The paint should match and have a good finish. The interior should have wear in relation to the age of the vehicle. Carpet and seat upholstery should be clean, and all power options should work. The mileage should be within the acceptable range for the model year.

An Average Retail vehicle on a dealer lot may include a limited warranty or guarantee, and possibly a current safety and/or emission inspection (where applicable).

Note: Vehicles/Vessels in exceptional condition can be worth a significantly higher value than the Average Retail Price shown.



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.18-32696  
Chapter 7

Gregg Joseph Schmitt,  
  
Debtor.

***MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY***

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Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation holds a perfected interest in a 2005 Winnebago Journey Motorhome with a vehicle identification number 4UZA AHDC75CV28043 (the "Vehicle"). As of September 5, 2018, payments due under the terms of the Contract for the months of May 2018 through August 2018 totaling \$5,582.44 have not been made by the Debtor. As of September 5, 2018, the balance due under the Contract is \$99,605.06. On information and belief, the NADA retail value of the Vehicle is approximately \$61,800.00. Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation has not been provided with evidence of current insurance on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the contract between the Debtor and Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation has otherwise not been provided with adequate protection

of interest in the Vehicle. Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation has not been provided with evidence of current insurance on the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation to relief from the stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). As of September 5, 2018, the balance due under the contract is \$99,605.06. The NADA retail value of the Vehicle is approximately \$61,800.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

#### CONCLUSION

For all the reasons set forth herein, Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation is entitled to an order terminating the automatic stay of 11 U.S.C. §362 and authorizing it to foreclose its interest in the Vehicle in accordance with nonbankruptcy law.

Dated: September 11, 2018

STEWART, ZLIMEN & JUNGERS, LTD.

By /s/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
2860 Patton Road  
Roseville, MN 55113  
651-366-6380 Ext. 111

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Gregg Joseph Schmitt

Debtor.

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 18-32696

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, Ltd., attorney(s) licensed to practice law in this court, with office address of 2860 Patton Road, Roseville, MN 55113, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion for Relief from Stay** upon each of the entities named below by electronic transmission or by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Roseville, Minnesota addressed to each of them as follows:

-----  
United States Trustee  
1015 US Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

(Attorney for Debtor)  
Nicole L. Anderson  
1650 11th Ave SW  
Suite 203  
Forest Lake, MN 55025

(Trustee)  
Patti J. Sullivan  
1595 Selby Ave Ste 205  
St Paul, MN 55104

(Debtor)  
Gregg Joseph Schmitt  
944 13th Ave SE  
Forest Lake, MN 55025-1927

The Music Works, Inc.  
PO Box 787  
Forest Lake, MN 55025-0787

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And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: September 11, 2018

Signed: /e/ Bradley J. Halberstadt  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 18-32696

Chapter 7

Gregg Joseph Schmitt,

***ORDER GRANTING RELIEF FROM STAY***

Debtor.

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This case is before the court on the motion of Santander Consumer USA Inc., servicer for GEMB Lending, Inc. FKA E\*Trade Consumer Finance Corporation for relief from the automatic stay imposed by 11 U.S.C. §362(a).

Based on the record, the court finds that grounds exist under 11 U.S.C. §362(d) to warrant relief.

**IT IS ORDERED:**

1. The motion for relief from stay is granted as follows.
2. The automatic stay imposed by 11 U.S.C. §362(a) is terminated such that the movant may exercise its rights and remedies under applicable nonbankruptcy law with respect to the following property:

2005 Winnebago Journey Motorhome, VIN: 4UZA AHDC75CV28043

3. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated:

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Katherine A. Constantine  
United States Bankruptcy Judge